

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Case No. 1:21mj3115
Cleveland, Ohio
Plaintiff, April 6, 2021

vs.

JOSHUA GLOWACKI,
Defendant.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE THOMAS M. PARKER
UNITED STATES MAGISTRATE JUDGE

PRELIMINARY HEARING AND DETENTION HEARING
HELD VIA VIDEOCONFERENCE

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Proceedings recorded by mechanical stenography from a
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P R O C E E D I N G S

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THE CLERK: The case before the court is 21mj3115,
United States of America versus Joshua Glowacki.

THE COURT: Good morning, everyone.

Counsel, if you would, please, indicate
appearances for today's record.

MR. SULLIVAN: Good morning, Judge. On behalf of
the United States, Michael A. Sullivan.

Also present on the call today is Special Agent
Monica Hantz from the FBI.

THE COURT: How do you spell Agent Hantz's last
name?

MR. SULLIVAN: H-a-n-t-z.

THE COURT: Thank you.

MR. NEMECEK: Good morning, Your Honor. Eric
Nemecek on behalf of the defendant, Joshua Glowacki.

THE COURT: Good morning, Counsel.

Good morning, Ms. Hantz.

Good morning, Mr. Glowacki. "Glowacki," I should
say.

SPECIAL AGENT HANTZ: Good morning.

THE DEFENDANT: Good morning.

THE COURT: Mr. Glowacki, are you able to hear
what we are saying so far?

1 THE DEFENDANT: Yes, I am, Your Honor.

2 THE COURT: If you do run into any issues with
3 your video or audio connections, please find a way to signal
4 that to us. We will stop the hearing immediately if that
5 occurs. It's essential that you be able to fully
6 participate.

7 Do you understand what I'm saying?

8 THE DEFENDANT: Yes, I do, Your Honor.

9 THE COURT: All right. We also have participating
10 today our Pretrial Services Officer Travis Jennings.

11 Officer Jennings has prepared a report of pretrial
12 services.

13 Have counsel each had an opportunity to review
14 that report?

15 MR. SULLIVAN: I have, Judge. Thank you.

16 MR. NEMECEK: Judge, I have -- I have not received
17 the report. I wasn't present at the initial appearance last
18 week and I don't believe it was forwarded over as of yet. I
19 can take a look at it. If someone would like to send it to
20 me quickly, I can take a look at that.

21 THE COURT: Jaclyn will send you a copy now.

22 In a moment I will ask you whether your nonreceipt
23 of that report up to this moment in any way affects your
24 desire to go forward today. It's essential that the defense
25 be fully prepared, so if you feel like you need more time to

1 review what's in that report, I will give you whatever time
2 you need.

3 MR. NEMECEK: Thank you, Judge.

4 THE COURT: All right. We are on the record today
5 for a preliminary hearing per the defendant's request on the
6 charge in the complaint that's been filed in this action.

7 The preliminary hearing will be conducted in
8 accordance with Rule 5.1 of the Federal Rules of Criminal
9 Procedure.

10 The purpose of that hearing is to simply allow the
11 court to determine whether there is probable cause to
12 support the charges in the complaint.

13 Mr. Nemecek, will you, the defense, be going
14 forward with the preliminary hearing?

15 MR. NEMECEK: Yes, Your Honor.

16 THE COURT: We are also on the record for a
17 hearing on the government's motion for detention. That
18 hearing will be conducted in accordance with the
19 requirements of the United States Bail Reform Act.

20 The purpose of that hearing is to allow the court
21 to determine whether there are any conditions or combination
22 of conditions that could be put into a bond order that would
23 reasonably assure the appearance of the defendant at future
24 proceedings and that would reasonably assure the safety of
25 other persons and the community in the event Mr. Glowacki

1 were to be released on bond.

2 As we begin, I am going to ask Mr. Sullivan to
3 state for the record what the charge or charges are in the
4 complaint, and also to state the associated penalties.

5 MR. SULLIVAN: Good morning, Judge. The complaint
6 charges Mr. Glowacki with one count of receipt/distribution
7 of visual depictions of minors engaged in sexually explicit
8 conduct. That's in violation of 18 U.S. Code Section
9 2252(a)(2).

10 That normally carries a penalty of up to 20 years
11 with a minimum mandatory term of 5 years. Based on
12 Mr. Glowacki's prior conviction, he may be subject to the
13 increased penalties of the minimum mandatory 15 years and a
14 maximum of 40 years.

15 It also carries up to a \$250,000 fine and up to
16 lifetime supervised release, with a minimum term of five
17 years' supervised release.

18 In addition, there's a \$100 special assessment,
19 and then the \$5,000 special assessment pursuant to the
20 Justice for Victims of Trafficking Act.

21 THE COURT: All right. Thank you, Mr. Sullivan.

22 And, Mr. Glowacki, you previously did receive a
23 copy of the complaint with the attached affidavit; is that
24 correct?

25 THE DEFENDANT: I did, Your Honor.

1 THE COURT: Have you had a chance to review those
2 with Attorney Nemecek?

3 THE DEFENDANT: Not with the attorney, sir. I
4 haven't been able to speak with him for a while now.

5 THE COURT: Mr. Nemecek, do you need time to meet
6 with your client to review the content of the pretrial
7 services report and to discuss the contents of the complaint
8 and otherwise prepare for today's hearing?

9 MR. NEMECEK: I don't believe so, Your Honor.
10 Mr. Glowacki, when he was initially detained, he was, I
11 think, placed on some sort of preventative watch, which
12 meant that I wasn't able to reach him for a couple days.

13 But I don't believe that -- that's going to impact
14 our ability to go forward today.

15 The same thing with the presentence -- or the
16 pretrial services report. I had a chance to review that
17 just now, and I don't believe additional time would be
18 needed in order to go forward today.

19 THE COURT: Well, Mr. Glowacki, please do
20 understand, sir, that you do have a constitutional right to
21 be represented by counsel at every stage of the proceedings.
22 It's my understanding that you have retained the services of
23 Attorney Nemecek and that he is here today serving as your
24 legal counsel.

25 First, do you understand your right to an

1 attorney?

2 THE DEFENDANT: I do, Your Honor.

3 THE COURT: And do you understand that Mr. Nemecek
4 is here today serving as your lawyer?

5 THE DEFENDANT: I do, Your Honor.

6 THE COURT: As we go through this hearing today,
7 you are entitled to speak to counsel whenever you feel the
8 need to do that. And because we are operating in a Zoom
9 environment, we can put you in a breakout room where you and
10 your lawyer could speak privately.

11 So if you feel the need to speak to counsel at any
12 point during the hearing, all you need to do is tell me that
13 and we will take a break so that you can do so.

14 Do you understand that?

15 THE DEFENDANT: I do, Your Honor.

16 THE COURT: Do you feel the need to speak to your
17 lawyer now as we begin?

18 THE DEFENDANT: It might be helpful, Your Honor,
19 just to cover some things.

20 THE COURT: All right. We'll take a brief break
21 to allow the defense to do that, and then we'll come back on
22 the record as soon as Mr. Nemecek signals that he is done
23 with that session.

24 (Recess had.)

25 THE COURT: We can go back on the record.

1 Mr. Glowacki and counsel, you've had an
2 opportunity to confer privately. Are the defendants -- or
3 is the defense, I should say, ready to proceed with today's
4 hearings?

5 MR. NEMECEK: Yes, Your Honor.

6 THE COURT: All right. We are using
7 videoconferencing for this procedure today. Is there any
8 objection to the use of video from the defense?

9 MR. NEMECEK: No, Your Honor.

10 THE COURT: Mr. Glowacki, can you confirm that you
11 have no objection to appearing for today's hearings by way
12 of video?

13 THE DEFENDANT: I have no objection, Your Honor.

14 THE COURT: All right. Thank you.

15 Let me cover a few more background things. This
16 is a hearing at which the government may call witnesses.
17 The defense has the right to cross-examine witnesses. It
18 also has the right to present evidence.

19 Mr. Glowacki, as a part of that evidence, you can
20 be called to testify, and you have the right to do that.
21 But it's important, however, that you cannot be required to
22 testify, because you do have the right to remain silent.
23 And, as I mentioned, you have the right to consult with your
24 attorney at any time.

25 The rules of evidence that preclude the court's

1 receipt of hearsay evidence do not apply in a hearing like
2 this.

3 Both sides can proceed in whole or in part by way
4 of proffer, which is a description or providing a
5 description of the evidence rather than calling the actual
6 witnesses and submitting documents and so forth.

7 If -- the evidence and examinations today will be
8 limited to the issues of probable cause and detention. The
9 court is not in a position to entertain any motions to
10 suppress evidence, nor can I consider any argument that
11 evidence was obtained unlawfully.

12 We'll proceed in the following way: The
13 government will first present any and all evidence it has in
14 support of both the probable cause issue and the issue of
15 detention, and then the defense will present its evidence.

16 After that, the court will hear arguments from
17 counsel if they wish to provide them.

18 Because of the nature of the charge in this case,
19 there is a presumption for detention. So let me explain
20 that.

21 What that means, Mr. Glowacki, is that Congress,
22 in passing the Bail Reform Act, has determined that under
23 certain kinds of cases, and this is one of them, there is a
24 presumption that no condition or combinations of conditions
25 would reasonably assure the safety of other persons and the

1 community, or would reasonably assure the appearance of the
2 defendant.

3 The defendant has a right to rebut that
4 presumption. In order to do so, you must present some
5 evidence to establish that bond conditions could indeed
6 reasonably assure your appearance at future proceedings and
7 reasonably assure the safety of the community.

8 The fact that there's a presumption for detention
9 does not in any way affect the fact that you are presumed
10 innocent of the charge that's been filed against you in this
11 case.

12 And the defense -- the government, rather, retains
13 the overall burden to prove by clear and convincing evidence
14 that bond conditions cannot reasonably assure the safety of
15 the community or can prove by a preponderance of the
16 evidence that bond conditions will not reasonably assure the
17 appearance of the defendant at future proceedings.

18 Now, with those things having been said, we are
19 now ready to proceed.

20 Mr. Sullivan, what evidence would you like to
21 submit on behalf of the United States, both on the issues of
22 probable cause and detention?

23 MR. SULLIVAN: Thank you, Judge.

24 We would like to submit the affidavit in support
25 of the criminal complaint, the criminal complaint and the

1 pretrial services report. And we feel that those -- those
2 establish both probable cause and justification for
3 detention.

4 THE COURT: Is there any objection by the defense
5 to the court's receipt of the report of pretrial services?
6 Obviously, the complaint with attached affidavit are already
7 a part of the record.

8 MR. NEMECEK: No objection to the receipt of the
9 pretrial services report, Your Honor.

10 THE COURT: All right. It will be received.

11 Mr. Sullivan, do you wish to submit any other
12 evidence or proffer any additional facts?

13 MR. SULLIVAN: No, thank you, Judge.

14 THE COURT: All right. Mr. Nemecek, how would you
15 like to proceed on behalf of the defense?

16 MR. NEMECEK: Your Honor, if I could, I'd like to,
17 I guess, question the agent involved in the case relative to
18 the probable cause issue, Agent Hantz.

19 THE COURT: She's here. Agent Hantz, you may be
20 sworn in. If you'll raise your right hand, I'll have the
21 courtroom deputy administer the oath.

22 MONICA HANTZ, of lawful age, a witness called by
23 the Defendant, being first duly sworn, was examined and
24 testified as follows:

25 CROSS-EXAMINATION OF MONICA HANTZ

1 BY MR. NEMECEK:

2 Q. Good morning, Agent Hantz.

3 THE COURT: All right, Mr. Nemecek, go ahead.

4 BY MR. NEMECEK:

5 Q. Good morning, Agent Hantz.

6 A. Good morning.

7 Q. I'd like to start talking a little bit about the
8 investigation in this case.

9 Now, the affidavit references that there was a
10 particular website on the dark web that was involved where
11 the child pornography was made available; is that correct?

12 A. That's correct.

13 Q. Okay. Can you explain what the dark web is?

14 A. It's like we can -- the best way -- easiest way to
15 describe would be like a separate part on the Internet that
16 the only way to access it will be using a browser such as
17 Tor.

18 Q. Okay. And so how does that dark web, I guess, differ
19 from the regular Internet that most people would use?

20 A. So first you have to have a special browser to be able
21 to access those URLs or those addresses. And then you have
22 to know where to go, because there's no good thing like such
23 as Google that we have [unintelligible] to be able to search
24 and find this website.

25 Q. And does the specific browser that you would need or

1 the Tor browser that you would need in order to access the
2 dark web, does it provide any sort of, I guess, anonymity to
3 users?

4 **A.** It certainly does.

5 **Q.** Okay. And what sort of anonymity does it provide or
6 how does it do that?

7 **A.** So Tor, it bounces your connection through multiple
8 servers hiding your true identity or true location. So you
9 could be browsing in Tor from Ohio but you're going to go
10 through servers potentially in Germany or Russia. You keep
11 bouncing until it goes to the destination address or what
12 they call [unintelligible] in between.

13 **Q.** Okay. And I guess focusing specifically on the darknet
14 site that was at issue in this case, what would a user need
15 to do in order to gain access to that website or whatever
16 the content is that is contained on that website?

17 **A.** All they need to do is go to that URL or that
18 [unintelligible] address. The landing page or the front
19 page is loaded with these images.

20 **Q.** Okay. But in order to gain access, would they need to
21 create any sort of account or make any sort of payment?

22 **A.** Just -- you can get additional access and get even more
23 images or videos if you make that payment.

24 **Q.** Okay. And I think the affidavit in this case, if I'm
25 not mistaken, indicates that there was evidence that an

1 e-mail address associated with Mr. Glowacki had purchased
2 bitcoin, correct?

3 **A.** Correct.

4 **Q.** And had sent that bitcoin to an address that is
5 associated with this website?

6 **A.** That's correct.

7 **Q.** Okay. Now, the affidavit I believe indicates that
8 Mr. Glowacki registered an account at a virtual currency
9 exchange in November of 2019.

10 How did you become aware of that?

11 **A.** It came through leads and [unintelligible] that came to
12 us.

13 **Q.** Okay. And the same question as it relates to the two
14 payments that were made from that address, you learned that
15 through leads and --

16 **A.** No, that was confirmed -- once we reach out to the
17 [unintelligible] currency provider, they provide a record
18 associated to Mr. Glowacki and that's where we identify
19 those other payments.

20 **Q.** Okay. And during the investigation in this case, did
21 you do anything to identify the location of where, I guess,
22 the account for that dark web site was created or where the
23 bitcoin was purchased from? Meaning like the IP address or
24 anything else?

25 **A.** So we definitely can see that associated to the bitcoin

1 transaction and the purchase that came through the provider.

2 Q. Okay. So there was, I guess, confirmation of a
3 particular IP address that was used to create an account?

4 A. That's correct, yes.

5 Q. Okay. And what did that, I guess, information reveal?

6 A. Didn't give us much [unintelligible] associated to cell
7 phone, so today many of these providers do not for cell
8 phone IPs because they are shared by many users.

9 Q. Okay. And in terms of this dark web website that we're
10 talking about, the darknet site here, you mentioned that, I
11 guess, an individual could get access to additional material
12 if they created an account and paid money; is that correct?

13 A. If they -- if they send a payment, yes.

14 Q. Okay. And so once somebody would send a payment or
15 create an account to access the site, how would they -- how
16 would the material or the contents of the website, how would
17 they come into, I guess -- how would they be able to view
18 that? Would it just get sent out from the website, or would
19 they have to actually log on to the site and view it?

20 A. That depends on a case-by-case or side-by-side basis.
21 On this particular instance, we did not pay for additional
22 access.

23 Q. Okay.

24 A. So I cannot talk about how the machination on this
25 website actually worked.

1 **Q.** Okay. And so we know that Mr. Glowacki -- or, I guess,
2 as the affidavit indicates, Mr. Glowacki would have sent
3 payment to this particular website back in December of 2019,
4 correct?

5 **A.** Yes. That's correct.

6 **Q.** Okay. And prior to executing the search warrant, was
7 there any evidence that Mr. Glowacki ever accessed the
8 website?

9 **A.** No.

10 **Q.** Okay. And prior to the search warrant, was there any
11 evidence that he ever downloaded any child pornography from
12 that website?

13 **A.** No.

14 **Q.** During the investigation, did you ever download any
15 child pornography from Mr. Glowacki?

16 **A.** No, we did not.

17 **Q.** Okay. Are you aware of any -- whether any other law
18 enforcement officers ever downloaded any child pornography
19 from Mr. Glowacki?

20 **A.** Not to my knowledge.

21 **Q.** And are you aware of whether anybody else, any other
22 users or anyone else downloaded any child pornography from
23 Mr. Glowacki?

24 **A.** Not to my knowledge.

25 **Q.** And is there any evidence that Mr. Glowacki ever sent

1 child pornography or made those materials available to
2 anybody else?

3 **A.** No, not on my -- not so far.

4 THE COURT: This feels like we're doing a
5 discovery conference here.

6 MR. NEMECEK: No. I apologize, Your Honor. I'm
7 just trying to go through the affidavit. I'll move it
8 along.

9 THE COURT: Well, the affidavit doesn't speak in
10 any way, shape or form about any allegation that
11 Mr. Glowacki sent materials to others or did any
12 peer-to-peer sharing of files. That isn't part of the case.

13 MR. NEMECEK: Well, he's charged with receipt and
14 distribution. I mean, that's what --

15 THE COURT: Well, he's charged with possession as
16 well.

17 MR. NEMECEK: I understand. But the receipt and
18 distribution, I guess the point that I was getting at was
19 with the making it available, sending it to anybody would go
20 to the distribution of porn- --

21 I'll move along, Your Honor.

22 BY MR. NEMECEK:

23 **Q.** When the search warrant was executed in this case,
24 would you say that Mr. Glowacki was cooperative with
25 investigators?

1 **A.** I will say so, yes.

2 **Q.** Okay. So he didn't make any effort to interfere with
3 the execution of the search warrant?

4 **A.** No, he did not.

5 **Q.** And was he arrested at the time --

6 **A.** No.

7 **Q.** -- that the search warrant was executed?

8 **A.** He was with us, but he wasn't -- he was there
9 voluntarily. He wasn't in cuffs or -- he was just sitting
10 in the truck with us.

11 **Q.** Okay. And are you aware how he came into custody as it
12 relates to this case? Did he voluntarily surrender?

13 **A.** We executed the search warrant, and upon arrival we
14 call everybody out, and he was brought in to us.

15 **Q.** Okay. So later, after the search warrant, days later
16 is when he was brought in for --

17 **A.** That's correct, yes.

18 MR. NEMECEK: No further questions, Judge.

19 THE COURT: Remind me, did Mr. Glowacki appear by
20 summons or by arrest?

21 MR. SULLIVAN: He was arrested, Your Honor.

22 THE COURT: Thank you.

23 Do you wish to examine, Mr. Sullivan?

24 MR. SULLIVAN: No, thank you, Judge.

25 THE COURT: All right. Mr. Nemecek, do you have

1 any further questions for Special Agent Hantz?

2 MR. NEMECEK: No, Your Honor. Thank you.

3 THE COURT: All right. Do you have any other
4 evidence or factual information you wish to present or
5 proffer?

6 MR. NEMECEK: Your Honor, just argument, I guess,
7 as it relates to the issue of detention. Beyond that, no
8 witnesses or evidence, Judge.

9 THE COURT: All right. The court is going to find
10 for the record, based on the fact that the defense is going
11 to argue the issue of detention only, that there is probable
12 cause to support the charge in the complaint. The case will
13 be bound over to the grand jury for further proceedings.

14 Mr. Glowacki, what that means is that the case
15 will be presented to the grand jury. The grand jury will
16 then make its own probable cause determination. It may be
17 on the charge in the complaint. It may be on additional
18 charges, depending on how the government presents the
19 evidence to the grand jury.

20 If the grand jury finds probable cause, then they
21 would issue a document known as an indictment and the case
22 would proceed. If the jury -- grand jury does not find
23 probable cause, the case would either be dismissed or
24 modified in some way. But the matter will be bound to the
25 grand jury.

1 With those things having been said, let's move on
2 to the arguments of counsel regarding the issue of
3 detention.

4 Mr. Sullivan, the government bears the burden of
5 proof. How do you wish to argue the matter?

6 MR. SULLIVAN: Judge, thank you. I'll just make a
7 few brief comments.

8 As you indicated in the beginning, there is a
9 statutory presumption for detention, and the government's
10 opinion, or it's our position that that presumption has not
11 been rebutted at all during this hearing. There's been no
12 evidence offered that's rebutted that presumption.

13 While in this case the evidence is that
14 Mr. Glowacki used a darknet site trying to mask his identity
15 to download child pornography, also as evidenced from the
16 complaint as well as the pretrial services report,
17 Mr. Glowacki has a prior conviction for child pornography
18 offenses in the state court. He was currently out on
19 release, post-release control or probation because he was
20 still under that case where he was convicted of child
21 pornography offenses.

22 In addition, Mr. -- which that also increases,
23 again, his sentence potentially up to a 15-year mandatory
24 minimum, which I believe would certainly give Mr. Glowacki
25 an incentive to plea.

1 In addition, as the pretrial services report
2 indicates, Mr. Glowacki has suffered from depression and
3 some mental health issues, and indeed, after he was -- the
4 search warrant, he was hospitalized briefly because of fear
5 on the part of his parents that he would harm himself.

6 So there's been nothing -- nothing offered that
7 would rebut the presumption, and the government feels that
8 Mr. Glowacki should be detained pending trial.

9 THE COURT: All right. Thank you.

10 Mr. Nemecek, how do you wish to argue on behalf of
11 the defense?

12 MR. NEMECEK: Thank you, Your Honor. Just
13 briefly.

14 As noted in the pretrial services report,
15 Mr. Glowacki is 23 years old. He's a lifelong resident of
16 northeast Ohio. He's got strong ties to the community.

17 Prior to his arrest in this case, he was residing
18 with his mother and father. Both of them have indicated
19 their continuing support for him.

20 He does have a history, as the government noted,
21 of anxiety and depression. However, he, you know, on his
22 own volition, has been engaged in counseling at Advanced
23 Psychotherapy Services for over three years at this point.

24 I have spoken with Mr. Glowacki's counselors.
25 They've indicated that he's consistently reported and that

1 he's demonstrated, you know, commitment to the treatment
2 process.

3 I understand that there was a prior conviction
4 that he had. However, as it relates to that case, there is
5 no, I guess, allegations or suggestions that he, you know,
6 attempted to abscond or failed to appear at any required
7 court proceedings.

8 The same with probation, no allegations that he
9 ever failed to report to the PO.

10 So he's been compliant throughout the course of
11 his supervision on this case -- or on that case.

12 As testified to in this hearing, he didn't do
13 anything in an effort to obstruct the investigation. He was
14 cooperative with officers and he voluntarily
15 self-surrendered.

16 So I would submit that there are conditions of
17 release that can ensure his appearance at court, as well as
18 the safety of the community, such as restricting/prohibiting
19 Internet access, you know, at the residence, as well as any
20 sort of electronic monitoring the court would deem
21 appropriate here.

22 I would submit that with certain conditions in
23 place, there would not be a concern regarding his ability
24 to -- or his determination to, I guess, abscond or commit
25 offenses during the pendency of this case.

1 Thank you, Judge.

2 THE COURT: Mr. Nemecek, do you have background
3 information on Mr. Glowacki's hospitalization? How long was
4 he hospitalized? Did he do that --

5 MR. NEMECEK: My understanding is that he reached
6 out to his counselor and indicated that he was struggling,
7 you know, shortly after the search warrant was executed in
8 this case, understandably. And out of an abundance of
9 caution, they, you know, had suggested that he go in on a
10 72-hour psychiatric hold.

11 So they, you know, explained that to Mr. Glowacki.
12 He was compliant and understood. They contacted EMS. They
13 came out. And he was, I guess, placed on a 72-hour hold and
14 released, I believe, on Monday, the day before he was -- he
15 made arrangements to surrender on this case. I think it was
16 last Monday.

17 THE COURT: Okay. And I'm not clear from Officer
18 Jennings' report whether Mr. Glowacki resides by himself or
19 with his parents. Maybe your client can clarify.

20 THE DEFENDANT: I do currently reside with my
21 parents, Your Honor.

22 THE COURT: Do they live at the Ralph Avenue
23 address, or is that your own residence?

24 THE DEFENDANT: That is their residence.

25 THE COURT: Pardon?

1 THE DEFENDANT: That is their residence, Your
2 Honor.

3 THE COURT: Were you living at that address, say,
4 earlier in the year up until the time of the arrest?

5 THE DEFENDANT: I was, Your Honor.

6 THE COURT: It appears that the search warrant was
7 executed on March 23. The complaint was filed on March 29.
8 It would appear that the initial appearance occurred -- took
9 place the next day, on the 30th.

10 So am I understanding this correctly, Mr. Nemecek,
11 that Mr. Glowacki was released from the hospital on or about
12 the 29th?

13 MR. NEMECEK: Last Monday, Your Honor. I don't
14 recall the particular date offhand. But it was last Monday
15 he was released. The 29th.

16 THE COURT: All right. Well, the court is
17 obligated, as I mentioned, to make a decision on the issue
18 of detention under the requirements of the Bail Reform Act.
19 That involves an examination of the factors set forth in the
20 statute. And let's go through those now.

21 The government seeks detention under 3142(f)(1),
22 and particularly subparagraph -- pardon me, it's under
23 3142(e)(2), and then subparagraph (3)(E).

24 How's that for an alphabet soup arrangement?

25 But the court makes a decision on the issue of

1 detention under the factors set forth in 3142, subsection
2 (g). So the court is required to consider the nature and
3 circumstances of the offense charged, including whether the
4 alleged violation or statutory violation has a minor victim.
5 And that's the allegation in this case, is that there's a
6 minor victim involved in the possession, receipt or
7 distribution of child pornography.

8 The court is required to consider the weight of
9 the evidence against the person. That is not the weight of
10 the evidence on the underlying charge, but the weight of the
11 evidence that the -- that bond conditions cannot reasonably
12 assure the appearance of the defendant or reasonably assure
13 the safety of the community or other persons.

14 As I look at that issue, I'm struck by the fact
15 that both the government and the defense have provided the
16 court with minimal arguments, and they instead seem to
17 assert that the facts of the case and the allegations
18 involved in Mr. Glowacki's history as it's been revealed
19 through the pretrial services report of Officer Jennings, do
20 reflect some concerns about whether the defendant would
21 likely be able to comply or likely would comply with the
22 conditions as set forth in a bond here.

23 The government seems to point to the fact that the
24 defendant was already convicted of a similar type of offense
25 in state court just two years ago and was under court

1 supervision at the time of the alleged offense in this case,
2 which tend to -- tends to suggest that he's not willing to
3 comply with the requirements of court supervision.

4 The court must look at the history and
5 characteristics of the person, including character, physical
6 and mental condition, family ties, employment, financial
7 resources, community ties, past conduct, substance abuse
8 history and so forth.

9 There is evidence before the court of a mental
10 health history that is a matter of some concern to the
11 court.

12 The defendant has put forth evidence showing that
13 he's got family ties and lives with his parents. There's
14 evidence of parental support for him and the opportunity to
15 reside again with his parents. Those are important factors.

16 One of the factors the court must explicitly
17 consider is whether at the time of the current offense, the
18 person was on probation, parole or other type of release for
19 another similar type of offense -- another type of offense.

20 So the court must evaluate all those factors and
21 then make a determination on the issue of detention.

22 The court has received the report of Pretrial
23 Services Officer Jennings. Officer Jennings has done what
24 he always does, and that is to compile a history of the
25 defendant, family ties history and so forth. It confirms

1 largely what has been proffered by the defense, and contains
2 additional information about the defendant's educational
3 background, employment history and the like.

4 The record does indicate that Mr. Glowacki has not
5 been employed since July of last year. Given the pandemic,
6 that's not a shocking occurrence. Many people have come to
7 court and have not been able to hold jobs during this period
8 of time.

9 The report does confirm the mental health history
10 of the defendant and shows confirmation of that history.

11 There is no history of substance abuse reported to
12 the court.

13 And there's one prior criminal conviction.

14 Notwithstanding that amount of information,
15 Officer Jennings recommends to the court that bond not be
16 granted in this case. And he -- his conclusion is there are
17 no conditions or combinations of conditions that could be
18 put into a bond order that would reasonably assure the
19 safety of the community or assure the appearance of the
20 defendant.

21 So let me turn to my conclusions on these issues.

22 First on the issue of whether the defendant has
23 rebutted the presumption for detention. The law is quite
24 clear that the defense must come forward with some evidence
25 to show that bond conditions could be successfully put in

1 place.

2 The fact that the defendant was -- or is able to
3 return to his parents' house, does have family ties, does
4 have family support, and was indeed not even arrested on the
5 day of the search warrant, but was permitted to turn himself
6 in, that combination of facts is sufficient evidence to
7 rebut the presumption for detention. Because it is some
8 evidence that the defendant could comply with bond
9 conditions.

10 On the issue of whether bond conditions could
11 reasonably assure the appearance of the defendant, the fact
12 that the defendant has turned himself in and the government
13 has not really argued that the defendant is a risk of flight
14 other than positing that anyone who faces a potential
15 lengthy period of incarceration poses a risk of flight,
16 there's no specific evidence that the defendant poses a risk
17 of flight.

18 So I conclude the government has not met its
19 burden on the issue of attempting to show by a preponderance
20 of the evidence that the defendant poses a risk of flight.

21 Which gets us down to the main issue at hand, and
22 that is whether bond conditions could reasonably assure the
23 safety of other persons and the community. The government
24 seems to argue that it's Mr. Glowacki's own welfare and
25 well-being that should be of primary concern to the court.

1 And I'll indicate, quite frankly, that is a matter
2 of great concern to the court. The court sees this as a
3 case in which the defendant faces a charge. He's presumed
4 innocent of that charge. The defendant has every right to
5 stand in court and defend himself on that offense.

6 Whether he is likely to be found guilty of that
7 offense or not is not a matter that goes into a bond
8 evaluation. But certainly Mr. Glowacki is a human being who
9 has dignity and a right to come to court and to defend
10 himself. And the last thing that I would want to see is a
11 person who would harm himself.

12 The fact that he voluntarily went and sought
13 mental health treatment, voluntarily submitted to the
14 72-hour watch and, according to the proffered evidence, is
15 continuing with his mental health treatment suggests to me
16 that he does have a desire to protect himself and to take
17 care of his interests and would not likely harm himself
18 here.

19 So I conclude that that's not a basis for
20 detention.

21 So then the only other issue at hand is whether
22 the defendant would likely reengage in similar conduct to
23 what's been alleged in this case or what occurred in the
24 2019 case and thereby subject the community to potential
25 harm.

1 I conclude that with the appropriate management of
2 Internet connections and some level of accountability, those
3 issues can be reasonably handled through bond conditions.

4 So I do conclude the government has not met its
5 burden to show by clear and convincing evidence that bond
6 conditions cannot reasonably assure the safety of the
7 community.

8 That's a long way of saying, Mr. Glowacki, that I
9 am going to take a chance and release you on bond in this
10 case. And I'm going to take a few moments now and review
11 with you the conditions of bond. So let me pull up those
12 files.

13 You are going to be released on a \$50,000
14 unsecured bond. What that means is you are not required to
15 post any cash in order to be released, but you do face a
16 potential to forfeit up to \$50,000 if you do not return to
17 court when required or otherwise comply with the conditions
18 of your release.

19 Do you understand that?

20 THE DEFENDANT: I do, Your Honor.

21 THE COURT: All right. And let's look at what the
22 conditions of release will be. Some of them are standard
23 conditions that are required to be in every bond order, and
24 they are as follows:

25 You must not violate any federal, state or local

1 laws while on release.

2 You must cooperate in the collection of a DNA
3 sample if it's authorized by law and if it's requested from
4 you.

5 You must advise the court or pretrial services
6 office or supervising officer in writing before making any
7 change of residence or telephone number.

8 Under the terms of the condition I am going to
9 establish, I am going to require you to reside with your
10 parents at the address on Ralph Avenue. Therefore, you are
11 not permitted by the court's order to make any change in
12 your residence address unless you have prior approval from
13 pretrial services or the court.

14 And that approval would obviously entail a
15 situation where, say, your parents wanted to move. So I'm
16 not restricting them from moving. If their house is for
17 sale, for example, and they are getting ready to leave, they
18 can do that. But you have to verify that you are still
19 residing with them.

20 Do you understand what I'm saying?

21 THE DEFENDANT: I do, Your Honor. They're about
22 to move residences. I'm not --

23 THE COURT: They are. But your residence is going
24 to be controlled by --

25 THE DEFENDANT: [Unintelligible]. Okay. I

1 understand, Your Honor.

2 THE COURT: All right. Now, you must appear in
3 court when required and, if convicted, must surrender to
4 serve any sentence that the court may impose.

5 Do you understand that?

6 THE DEFENDANT: I do, Your Honor.

7 THE COURT: All right. You are going to be
8 subject to supervision by U.S. Pretrial Services in
9 Cleveland. And before we get off here today, Agent
10 Jennings -- or Officer Jennings, rather, will probably get
11 your phone number so that he can arrange to have a pretrial
12 officer contact you upon your release.

13 There is going to have to be some verification of
14 the suitability of your residence for pretrial release, so
15 you probably won't get released today, but it should be
16 within another day or two once pretrial services completes
17 its work.

18 You are to surrender any passport if you have one,
19 and you are prevented and restricted from obtaining a
20 passport if you don't have one. And you may not obtain any
21 international travel documents.

22 Now, your travel is going to be restricted to the
23 Northern District of Ohio. You may not leave the northern
24 half of this state without prior permission from your
25 pretrial officer or the court.

1 The court is going to order that you undergo a
2 psychiatric and mental health evaluation, and that you
3 follow through with any treatments that may be found to be
4 necessary, including taking any medication that may be found
5 to be necessary.

6 Do you understand that?

7 THE DEFENDANT: I do, Your Honor.

8 THE COURT: During this time of your release, you
9 may not possess a firearm, destructive device or other
10 weapon.

11 You may not -- strike that.

12 If you have any contact with law enforcement
13 during the time of your release, you are to report that
14 contact as soon as possible after it occurs to your pretrial
15 officer.

16 The court is going to indicate that you are
17 subject to complying with whatever terms of your probation
18 already exist in Cuyahoga County. So I'm not in any way
19 removing any of those conditions and, in fact, I am adding
20 as our conditions that you comply with whatever conditions
21 may already exist in Cuyahoga County.

22 THE DEFENDANT: I understand, Your Honor.

23 THE COURT: During the time of your release, you
24 will be placed on home detention with location monitoring at
25 the discretion of your pretrial officer.

1 Now, home detention means this: You, generally
2 speaking, are required to be there. But you are allowed to
3 leave the home if you get a job and you can go to work. You
4 are allowed to leave home to come to court proceedings. You
5 are allowed to leave home to attend to medical treatments,
6 religious services, to meet with your lawyer. But
7 otherwise, generally speaking, you must be at home.

8 And any job that you would take must not involve
9 direct contact with minors. And if you're not seeking
10 employment right now, then that is pretty much a moot point.

11 But you understand what I'm saying?

12 THE DEFENDANT: I do, Your Honor.

13 THE COURT: Now, when I say "location monitoring
14 at the discretion of your pretrial officer," they may
15 determine at the outset that they are not going to apply an
16 ankle bracelet, but they do have the discretion under this
17 court's order to monitor your location if they have any
18 reason to think that would be appropriate.

19 Do you understand what I'm saying?

20 THE DEFENDANT: I do, Your Honor.

21 THE COURT: And that's part of the reason why
22 they'll need to verify the suitability of your residence.

23 Now, here is a key part of your release. And
24 this, again, will have to be verified with your parents.

25 You are prohibited from accessing any computer,

1 Internet service provider, bulletin board system or any
2 other public or private computer network or service at any
3 location, including at any work locations, without prior
4 written approval of your pretrial services officer or the
5 court.

6 That means you may not utilize a telephone that
7 has Internet connection capability. If that's the sort of
8 telephone you've had in the past, you are not going to be
9 able to use that in the future.

10 It's my understanding that the government has
11 seized the phone that you had at the time of the search
12 warrant. If you need a new telephone, it is going to have
13 to be a flip phone or something that does not contain
14 Internet access.

15 And your parents will have to verify that they're
16 not going to keep Internet access in the residence. If they
17 can't verify that, then they are going to have to
18 alternatively verify that they are going to password protect
19 any computer or phones that they have, and they'll have to
20 verify with pretrial services that those passwords will have
21 been changed prior to you returning home and that they will
22 not give you those passwords.

23 Do you understand what I'm saying?

24 THE DEFENDANT: I do, Your Honor.

25 THE COURT: Do your parents have computers in the

1 residence?

2 THE DEFENDANT: Yes. My mother does currently
3 work from home. And there's a computer upstairs. Well, I
4 don't know how many have actually been returned yet, as
5 every computer was taken during the search and seizure.

6 THE COURT: All right. Well, this is going to
7 take a bit of effort to verify that you cannot get on the
8 Internet.

9 Do you understand that?

10 THE DEFENDANT: I understand.

11 THE COURT: I'm a little surprised that you had
12 Internet access upon your Cuyahoga County release. So you
13 just need to understand that this is not state court.

14 Do you understand what I'm saying?

15 THE DEFENDANT: I do, Your Honor.

16 THE COURT: If I get -- if I get one report that
17 you've had any contact with the Internet, then your bond is
18 going to be revoked and you'll be taken back into custody.

19 Now, I am putting on a part of the conditions of
20 release that you have no contact with minors. There's a
21 fairly detailed description of what that means. But that is
22 going to be a condition of the court's release.

23 All right. Now, I've covered a lot of different
24 issues. Let me seek questions first from defense counsel.

25 MR. NEMECEK: I don't have any questions at this

1 time, Your Honor.

2 THE COURT: Mr. Sullivan, do you have any
3 questions on behalf of the United States?

4 MR. SULLIVAN: Judge, I have no questions, but I
5 do have an objection. I would ask you to stay the
6 imposition of the order because we will be appealing, but
7 I'd ask for a stay for us to have the opportunity to appeal
8 this to the district judge.

9 THE COURT: I don't believe a stay is warranted
10 under the circumstances, but you certainly may appeal.

11 Officer Jennings, you undoubtedly have some
12 additional points I need to clarify.

13 PROBATION OFFICER: No, Your Honor, I think you
14 have clarified with him for him to be held and we'll check
15 out the residence and we'll notify the court after the
16 residence has been verified.

17 MR. SULLIVAN: Also, Judge, I just want to just be
18 clear. So you're denying us the stay to seek the review
19 from a district judge, you're denying that at this point?

20 THE COURT: That's correct.

21 MR. SULLIVAN: Okay.

22 THE COURT: I'm not -- I'm not denying you the
23 right to seek a review, I'm just denying --

24 MR. SULLIVAN: No, I understand.

25 THE COURT: -- the stay for that purpose.

1 MR. SULLIVAN: So you're ordering him to be
2 released while we're reviewing it? You're not allowing us
3 to seek appeal while he's in custody, but you're ordering
4 him to be released while we're seeking that appeal? I just
5 want to make that clear.

6 THE COURT: Well, I think that's fairly clear.

7 MR. SULLIVAN: Okay, great. Thank you.

8 THE COURT: However, as indicated, the court is
9 not authorizing the immediate release of the defendant.
10 Pretrial services will need to interact with Mr. Glowacki's
11 parents to find out with some level of detail what their
12 Internet accessing capability is in the home and how they
13 would propose to go about modifying passwords and this
14 defendant's ability to access the Internet through any
15 device in that residence.

16 And, Mr. Glowacki, just to be clear, the
17 restriction I'm putting upon you specifically precludes you
18 from going to a Verizon store, an AT&T store or something
19 like that and getting a new phone that you would be able to
20 gain Internet access with.

21 Do you understand that?

22 THE DEFENDANT: I do, Your Honor.

23 THE COURT: I think that covers everything that
24 needs to be addressed for purposes of the record.

25 If there's nothing further from the United States

1 or the defense, that should conclude today's proceeding.

2 MR. SULLIVAN: Nothing from the United States.

3 THE CLERK: Judge, would you ask if he could sign
4 those for him?

5 THE COURT: Yes, let's see that.

6 Mr. Glowacki, typically if you were in the
7 courtroom right now, you would be reviewing these bond
8 documents as I went over them, and then you'd have an
9 opportunity to sign them and receive a set. Obviously, with
10 us not being in the courtroom, we cannot do it that way. So
11 I would like your permission to send the bond documents to
12 Attorney Nemecek with the request that he review them,
13 verify that they say what I've said and then sign them on
14 your behalf and return a set to me.

15 He will then get a set of the bond documents to
16 you as soon as you are released.

17 Do we have your permission to proceed that way?

18 THE DEFENDANT: I accept, Your Honor.

19 THE COURT: All right. Thank you, everyone. Have
20 a good rest of your day.

21 (Thereupon, the proceedings were concluded.)
22
23
24
25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript,
to the best of my ability, transcribed from a digital
audio recording from the record of proceedings in the
above-entitled matter.

s/Lori A. Callahan
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I N D E X

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